

MEMORANDUM

February 24, 2005

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP
Alvin S. Kaufer

WARREN R. WELLEN
Senior Deputy County Counsel
Public Works Division

RE: Tower Acton Holdings, LLC and Sierra Highway Partners, LLC v.
Los Angeles County Waterworks District No. 37
LASC Case No. BC 181447

DATE OF
INCIDENT: 1989 - 2005

AUTHORITY
REQUESTED: Accept payment of \$1,000,001

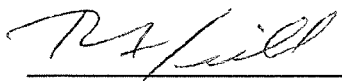
COUNTY Department of Public Works/Los Angeles County Waterworks District
DEPARTMENT: No. 37, Acton

CLAIMS BOARD ACTION:

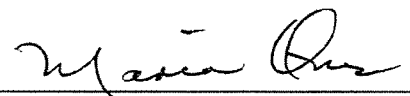
☐ Approve

☐ Disapprove

☒ Recommend to Board of
Supervisors for Approval


_____, Chief Administrative Office
ROCKY ARMFIELD


_____, County Counsel
JOHN F. KRATTLI


_____, Auditor-Controller
MARIA M. OMS

on March 1, 2005

SUMMARY

This is a recommendation to settle an uncollected judgment for attorneys' fees and costs in the principal amount \$1,474,594, accruing post-judgment interest at ten percent per annum, obtained by Los Angeles County Waterworks District No. 37 ("District") against Tower Acton Holdings, LLC ("Tower"), and Sierra Highway Partners, LLC ("Sierra"). Under the proposed settlement, the District will receive \$1,000,001 from B&C Land and Water, LLC, Brandenburg-Agua Dulce, LLC, and Wood Ridge, LLC (collectively the "Companies"), payable within three years, and assign its judgment to the Companies. The Companies' payment obligation will be secured by a letter of credit in favor of the District.

LEGAL PRINCIPLES

A plaintiff which seeks and is awarded attorneys' fees is liable to the defendant for attorneys' fees if the award is subsequently reversed and judgment entered for the defendant.

A nonparty to a lawsuit potentially may be liable as though he were a party if he controls the action and has a proprietary or financial interest in the judgment.

SUMMARY OF FACTS

In 1989, the District entered into a Master Service Agreement ("MSA") with certain developers in the Acton area for the creation of a water system to serve their properties. Pursuant to the MSA, the developers were to receive certain proceeds if surplus capacity in the system was utilized by other users within a specified period of time.

Tower and Sierra (jointly "Tower/Sierra"), although not original parties to the MSA, asserted they became intended third-party beneficiaries of the MSA. They sued the District when the District refused to amend the MSA to enhance Tower/Sierra's ability to receive proceeds from the sale of surplus capacity in the water system. They alleged that the District had breached the MSA and the covenant of good faith and fair dealing. Following a trial, the jury returned a verdict in favor of Tower/Sierra and against the District for \$10,000,000. The trial court also awarded Tower/Sierra attorneys' fees and costs.

The District appealed the trial court judgment. On appeal, the Court of Appeal reversed the judgment and directed the trial court to enter judgment in favor of the District.

The trial court subsequently entered judgment in favor of the District and against Tower/Sierra for attorney fees of \$1,187,000, costs of \$32,594, and interest of \$255,000, for the total sum of \$1,474,594 ("Judgment"). At that time, the District also filed a motion seeking to hold the Companies liable for the Judgment based upon the argument that they were successors in title to Tower/Sierra. Although the court denied the motion at that time, the District retains the right to file a new action against the Companies based on these theories.

The Judgment was entered on August 11, 2003, and it bears interest at ten percent per annum. Subsequent to obtaining the Judgment, the District pursued collection of the Judgment against Tower/Sierra. However, available records indicate that Tower/Sierra's assets are subject to an all-encompassing lien in favor of a lender to whom Tower/Sierra is in default on a multi-million dollar loan, and that the prospects of recovering the Judgment from Tower/Sierra or its principals appear doubtful.

Since the District retains a potential claim against the Companies as successors to Tower/Sierra, it pursued discussions with their representatives regarding a potential avenue to receive payment on the judgment. Following extensive negotiations, the Companies proposed to settle any potential claims the District might still have against them by paying the District \$1,000,001. The payment would be upon the sooner of the date that final subdivision maps are recorded on the property within Tract No. 50385 (which comprises a portion of the land which the Companies acquired from Sierra) or three years from the effective date of the settlement agreement. The Companies' payment obligation is to be secured by a letter of credit in favor of the District to be issued by an acceptable financial institution. Under the settlement, the District would assign to the Companies the Judgment against Tower/Sierra and dismiss all claims which it might have against the Companies arising from the Judgment.

DAMAGES

Although the District originally received an adverse trial court verdict against it in the amount of \$10 million, that verdict has been reversed. No damages are claimed against the District at this time. The District has a Judgment in its favor dated August 11, 2003 for \$1,474,594, which Judgment by statute bears simple interest at 10 percent per annum. As of February 11, 2005, accrued interest would equal \$221,200.

STATUS OF CASE

The District has a money judgment in its favor against Tower/Sierra only. The problem is one of collecting on the Judgment. The Companies, successors in title to Tower/Sierra, have proposed to pay \$1,000,001 to the District in exchange for assignment of the Judgment to them and a release from District of any further claims by the District against the companies in this dispute.


The district was represented by the law firm of Nossaman, Guthner, Knox and Elliott in both the trial and appellate courts. A total of approximately \$1,727,640 in attorney fees and costs has been incurred since the inception of the lawsuit filed by Tower/Sierra. This total includes the defense of the underlying action filed by Tower/Sierra and the subsequent appeal. This total also includes \$186,857 for the defense of a separate action filed by the Companies. Pursuant to a settlement agreement reached in March 2004, the Companies dismissed the separate action and partially reimbursed the District for its attorneys fees and costs in the amount of \$158,584.

EVALUATION

Financial and organizational records of Tower/Sierra strongly indicate that the Judgment is uncollectible from them. Evidence presented by the Companies in opposition to the District's prior attempt to make the Companies jointly and severally liable for the Judgment indicates that the likelihood of a successful action against the Companies for the Judgment is uncertain.

Given the considerable risks and costs associated with pursuing claims against the Companies for the Judgment, our outside counsel recommends that this case be settled for \$1,000,001 to be paid by the Companies to the District within three years. Our office and the Department of Public Works concur with this recommendation.

APPROVED:



RICHARD D. WEISS

Assistant County Counsel
Public Works Division

WRW:gm